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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: FEBRUARY 16, 1987

Volume 1 • Issue 11 • Pages 762-806



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes by examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

North Carolina Register. Published monthly by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions ninety-five dollars (\$95.00) per year.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	* Earliest Effective Date
12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	05/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	06/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	07/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	08/01/87
04/15/87	03/26/87	04/02/87	05/15/87	06/14/87	09/01/87
05/15/87	04/27/87	05/04/87	06/14/87	07/14/87	10/01/87
06/15/87	05/26/87	06/02/87	07/15/87	08/14/87	11/01/87
07/15/87	06/25/87	07/02/87	08/14/87	09/13/87	12/01/87
08/14/87	07/27/87	08/03/87	09/13/87	10/13/87	01/01/88
09/15/87	08/26/87	09/02/87	10/15/87	11/14/87	02/01/88
10/15/87	09/25/87	10/02/87	11/14/87	12/14/87	03/01/88
11/16/87	10/27/87	11/03/87	12/16/87	01/15/88	04/01/88
12/15/87	11/23/87	12/02/87	01/14/88	02/13/88	05/01/88
01/15/88	12/28/87	01/04/88	02/14/88	03/15/88	06/01/88
02/15/88	01/26/88	02/02/88	03/16/88	04/15/88	07/01/88
03/15/88	02/24/88	03/02/88	04/14/88	05/14/88	08/01/88

* The "Earliest Effective Date" was considering the agency files the rules with The Administrative Rules Review Commission the same calendar month as adoption by agency and ARRC approves the rules at the next calendar month meeting.

EXECUTIVE ORDER

EXECUTIVE ORDER NUMBER 31

AMENDMENT TO EXECUTIVE ORDER
NUMBER 28

Under Executive Order Number 28 issued on September 23, 1986, the "Interim Private Activity Bond Allocation Committee" was formed and Howard Haworth, Secretary of the Department of Commerce, was made a member and Chairman of the Committee. Howard Haworth having resigned from the position of Secretary of the Department of Commerce and from the Interim Private Activity Bond Allocation Committee and Claude E. Pope having been appointed Secretary of the Department of Commerce, it is appropriate to appoint him to the Interim Private Activity Bond Allocation Committee and for him to serve as Chairman.

NOW, THEREFORE, IT IS

ORDERED:

Section 1. The first three sentences of Section 2 on page 3 of Executive Order Number 28, dated September 23, 1986, are amended to read as follows:

The "Interim Private Activity Bond Allocation Committee" is hereby formed. Claude E. Pope, Secretary of the Department of Commerce, Charles C. Cameron, Executive Assistant to the Governor for Budget and Management, and Harlan E. Boyles, Treasurer of the State of North Carolina, shall constitute the membership of the Committee. Secretary Pope shall serve as its Chairman.

Section 2. All other portions of Section 2 and of each and every other section of Executive Order Number 28, dated September 23, 1986, is continued in full force and effect.

Done in Raleigh, North Carolina, this 21st day of January, 1987.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:ST:sw:gmh
DJ 166-012-3
P9823
R2070-2071

October 14, 1986

W. David Lee, Esq.
Dawkins & Lee
P. O. Drawer 399
Monroe, NC 28110

Dear Mr. Lee:

This refers to the July 1, 1986, annexation to the Town of Waxhaw in Union County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 12, 1986.

The Attorney General does not interpose any objections to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

In addition, we have been informed that the town increased the number of commissioners from three to five and changed the method of electing commissioners from concurrent to staggered terms. Our records fail to show that these changes have been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Act. If our information is correct, it is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the changes do not have the purpose and will not have the effect of discriminating on account of race or color. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See also 28 C.F.R. 51.9.

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, please follow the procedures set forth in Section 51.18 et seq. of the guidelines.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Waxhaw plans to take with respect to these matters. If you have any questions, feel free to call Ms. Shirley Turner (202-724-7384) of our staff. Refer to File Nos. R2070-2071 in any response to this letter so that your correspondence will be channeled properly.

Finally, future submissions under Section 5 should be addressed to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act. 28 C.F.R. 51.22.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:ST:dvs:gmh
DJ 166-012-3
R2070-2071
R4219

December 9, 1986

W. David Lee, Esq.
Dawkins & Lee
P. O. Drawer 399
Monroe, NC 28110

Dear Mr. Lee:

This refers to the increase in the number of commissioners from three to five and the change from two-year, concurrent terms to four-year, staggered terms for the Town of Waxhaw in Union County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on October 10, 1986; supplemental information was received on November 4, 1986.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:ST:jmc:gmh
DJ 166-012-3
R2526-2527

December 22, 1986

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, NC 27835-7207

Dear Mr. McCarley:

This refers to the change in the method of electing council members from at large to five single-member districts and one at-large position and the districting plan for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 23, 1986.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

STATEMENT OF ORGANIZATION

NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES

The North Carolina Department of Human Resources is an agency in the Executive Branch of State government. Its mission is to deliver or oversee the delivery of human services to the citizens of North Carolina and to participate in the development of human resources in the State.

To accomplish these objectives, the Department of Human Resources works to obtain needed legislation in the subject areas under its authority, adopts rules to govern the administration of its programs, and channels State and federal funds to many local grantees and provider agencies in the service delivery system. As the supervision of programs and the allocation of funds carry with them significant responsibilities, the Department of Human Resources performs monitoring and enforcement functions as well.

The Secretary of the Department of Human Resources, the administrative head of the agency, is appointed by the Governor and serves at the pleasure of the Governor.

The Department of Human Resources is divided into the following divisions: the Division of Aging; the Division of Facility Services; the Division of Health Services; the Division of Medical Assistance; the Division of Mental Health, Mental Retardation, and Substance Abuse; the Division of Services for the Blind; the Division of Social Services; the Division of Vocational Rehabilitation Services; the Division of Youth Services; and the North Carolina Schools for the Deaf and Blind.

Members of the public may obtain information from and make submissions or requests to the Department of Human Resources by communicating with the agency in writing or in person at 325 North Salisbury Street, Raleigh, North Carolina 27611 or by calling 1-800-662-7030. Inquiries concerning specific programs or subject areas within the purview of the Department of Human Resources may also be directed to the appropriate division.

PROPOSED RULES

TITLE 2 - AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Structural Pest Control Committee intends to repeal regulations cited as 2 NCAC 26A .0001-.0002; 26B .0001-.0003; 26C .0001-.0002; 26D .0001-.0002.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: G.S. 106-65.23; 106-65.28; 106-65.29.

The public hearing will be conducted at 1:00 p.m. on April 23, 1987 at Board Room, Agriculture Building, 1 W. Edenton Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Chairman of the Structural Pest Control Committee, P.O. Box 27647, Raleigh, North Carolina 27611.

CHAPTER 26 - N.C. STRUCTURAL PEST CONTROL COMMITTEE

SUBCHAPTER 26A - ORGANIZATION

- .0001 FUNCTION OF THE BOARD (REPEALED)
- .0002 MEMBERS OF COMMITTEE (REPEALED)

SUBCHAPTER 26B - MEETINGS

- .0001 FREQUENCY OF MEETINGS (REPEALED)
- .0002 LOCATION OF MEETINGS (REPEALED)
- .0003 REGIONAL MEETINGS (REPEALED)

SUBCHAPTER 26C - HEARINGS

- .0001 SUSPENSION AND REVOCATION OF OPERATOR'S LICENSE (REPEALED)
- .0002 HEARING PROCEEDINGS (REPEALED)

SUBCHAPTER 26D - REGULATION ADOPTION

- .0001 AUTHORITY OF COMMITTEE (REPEALED)
- .0002 CITATION OF RULES (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Structural Pest Control

Division intends to repeal regulations cited as 2 NCAC 34 .0201 and .0202.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: G.S. 106-65.29.

The public hearing will be conducted at 1:00 p.m. on April 23, 1987 at Board Room, Agriculture Building, 1 W. Edenton Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Chairman of the Structural Pest Control Committee, P.O. Box 27647, Raleigh, North Carolina 27611.

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0200 - STRUCTURAL PEST CONTROL COMMITTEE

- .0201 COMMITTEE SEAL (REPEALED)
- .0202 DUTIES OF COMMITTEE SECRETARY (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Structural Pest Control Division intends to repeal regulations cited as 2 NCAC 34 .0311 and .0315.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: G.S. 106-65.29.

The public hearing will be conducted at 1:00 p.m. on April 23, 1987 at Board Room, Agriculture Building, 1 W. Edenton Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Chairman of the Structural Pest Control Committee, P. O. Box 27647, Raleigh, North Carolina 27611.

SECTION .0300 - LICENSING AND CERTIFICATION

- .0311 RE-ISSUANCE FEE (REPEALED)

.0315 REPLACEMENT OF LOST
CARDS AND LICENSES
(REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Structural Pest Control Division intends to amend regulations cited as 2 NCAC 34 .0602 and .0904.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: G.S.
106-65.29.

The public hearing will be conducted at 1:00 p.m. on April 23, 1987 at Board Room, Agriculture Building, 1 W. Edenton Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Chairman of the Structural Pest Control Committee, P. O. Box 27647, Raleigh, North Carolina 27611.

SECTION .0600 - WOOD-DESTROYING
ORGANISMS AGREEMENTS

.0602 WOOD-DESTROYING INSECT
AND OTHER ORGANISM
REPORTS

(a) Any written statement as to the presence or absence of wood-destroying insects or their damage in buildings or structures for sale shall be on a form(s) prescribed by the committee Form SP-100, "North Carolina Wood-Destroying Insect Information Report." Incomplete or inaccurate Wood-Destroying insect reports shall not be acceptable and the issuance of such reports is grounds for disciplinary action by the committee. No Wood-Destroying Insect Reports or Wood-Destroying Organism Reports shall be issued before an inspection of the building or structure is made. Each Wood-Destroying Insect Report issued by a licensee shall be kept in the files of said licensee and made available, at the request of the enforcement agency, for inspection.

SECTION .0900 - DUTIES AND
RESPONSIBILITIES OF LICENSEE

.0904 PROHIBITED ACTS

(g) No certified applicator,

licensee or his employees shall represent to any property owner or his authorized agent or occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, if unless strongly supporting visible evidence of such infestation does not exist s.

TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Medical Care Commission intends to amend regulation cited as 10 NCAC 3H .0513.

The proposed effective date of this action is October 1, 1987.

Statutory Authority: G.S.
131E-104.

The public hearing will be conducted at 9:30 a.m. on March 20, 1987 at Division of Facility Services, Hearing Room, Room 201, 701 Barbour Drive, Raleigh, N.C.

Comment Procedures: Written comments may be sent to Mr. I. O. Wilkerson, Jr., Secretary, Medical Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603. Comments will be received from the date of publication until March 19, 1987.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3H - RULES FOR THE
LICENSING OF NURSING HOMES

SECTION .0500 - NURSING SERVICES

.0513 TRAINING

(a) A licensed facility shall provide for all patient or resident care employees a planned orientation and continuing education program emphasizing patient or resident assessment and planning, activities of daily living, personal grooming, rehabilitative nursing and/or restorative care, other patient or resident care policies and procedures, patients' rights, and staff performance expectations. Attendance and subject matter covered shall be documented for each session and available for licensure inspections.

(b) The administrator shall assure that each employee is oriented within the first week of employment to the facility's philosophy and goals.

(c) Each employee shall have

specific on-the-job training as necessary for the employee to properly perform his individual job assignment.

(d) Each nurse aide without one year's experience in a nursing home setting who is hired on or after (the effective date of this rule) to work in a facility shall have successfully completed a nurse aide training program approved by the Division of Facility Services (DHR), or shall enroll in the first available approved training program which is scheduled to commence within 90 days of the date of the nurse aide's employment. The program may be established by the facility or by an organization or educational institution. The training program shall consist of at least the following:

(1) 20 hours of classroom instruction within 90 days of employment. At least 10 hours shall be given before the nurse aide is assigned direct patient care duties. The instruction shall include the employee's duties, basic personal care skills, restorative care, patient safety and rights, social and psychological aspects of aging, interaction with families, importance of activities and social services, and death and dying.

(2) 40 hours of supervised training. These hours shall consist of an appropriately supervised work assignment and shall begin within the first 90 days of employment. The 40 hours of supervised training shall be completed within the first 120 days of employment.

(3) Proof of successful completion of training shall be retained in the facility records, and be available for inspection.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend regulation cited as 10 NCAC 8C .1106.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: G.S. 130A-361.

The public hearing will be conducted at 1:30 p.m. on March 18, 1987 at Cooper Memorial Health Building, Sixth Floor

Board Room, 225 N. McDowell Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on this subject may be sent to Mr. Barkley at the above address. Written and oral (for no more than 10 minutes) comments on this subject may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8C - NUTRITION AND DIETARY SERVICES

SECTION .1100 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

.1106 AUTHORIZED WIC VENDORS

(b) In order to participate in the WIC program, the vendor shall:

(16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods must be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1-4:

Food Item:	Type of Inventory:	Quantities Required:
------------	--------------------	----------------------

Milk - Whole fluid:	gallon and half gallon	
Skim/lowfat fluid:	gallon or half gallon	Total of 6 gallons fluid milk.
Nonfat dry:	quart package or	
Evaporated:	12 oz. can	Total of 5 quarts when reconstituted.

Cheese - 2 types - Total of 6 pounds.

Cereals - 4 types (minimum box size 8 1/2 oz. - Total of 12 boxes.

Eggs - Grade A, large or extra large: white or brown - 6 dozen.

Juices - Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are: 12 oz. frozen, 46 oz. can, 64 oz. container - 6 of each type in stock.

Dried Peas & Beans - 2 types - 3 one pound bags.

Infant Fruit Juice - 2 juices; 4.2 oz. jars - 30 jars.

Infant Cereal - 2 cereal grains; 8-oz. boxes (one must be rice) - 6 boxes.

Infant Formula - 2 types; 13 oz. concentrate - 62 cans.

For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac 60/40, Similac Plain (Low-Iron), Enfamil Plain (Low-Iron), SMA Low Iron, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, and Enfamil Premature Formula. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.

(g) North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.

TITLE 12 - JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the Private Protective Services intends to amend and repeal regulations cited as 12 NCAC 7D .0103, .0104, .0105, and .0106, .0108, .0109, .0110, .0201, .0203, .0301, .0404, .0503, and .0701, .0702, .0703, .0704, .0705, .0706, .0801, .0802, and .0803, .0804, .0805, .0806, .0807, .0809, .0902.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 74C-2; 74C-3; 74C-5; 74C-8; 74C-9; 74C-10; 74C-11; 74C-12; 74C-13; 74C-15; 74C-16.

The public hearing will be conducted at 12:00 p.m. (NOON) on March 20, 1987 at Ramada Inn, Highway 64-70, Hickory, N.C. 28601.

Comment Procedures: Any interested person may present his or her views and comments in writing 10 days prior to the hearing. Please send all information to Mr. Jim Kirk, N.C. Private Protective Services Board, P.O. Box 29500, Raleigh, N.C. Any person may request information or copies of the proposed rules by calling (919) 779-1611.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTION SERVICES BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0103 STANDING COMMITTEES OF THE BOARD (REPEALED)

.0104 DEFINITION

In addition to the definitions under G.S. Chapter 74C, the following definitions shall apply throughout this Subchapter:

- (1) "Applicant" means any person, firm, or corporation applying to the Board for a license, trainee permit, registration or firearms trainer certificate.
- (2) "Armed private security officer" means an individual employed, full time or part time, by a contract security company or a proprietary security organization:
 - (a) who at any time wears, carries, or possesses a firearm in the performance of his duties; and
 - (b) whose principal duty is that of:
 - (i) an armed security guard, officer, patrol, or watchman, officer or patrol;
 - (ii) armed armored car service guard, officer;
 - (iii) a private detective; or
 - (iv) an armed courier service guard, officer.

- (3) "Board" means the Private Protective Services Board established by G.S. Chapter 74C.
- (4) "Branch manager or operator" means the individual endowed with the responsibility and liability for a branch office.
- (5) "Branch office" means a separate but dependent part of a central organization engaged in the business of providing private protective services established for the purpose of extending the activities of the central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office.
- (6) "Chairman" means the Chairman of the Private Protective Services Board.
- (7) "Contract security company" means any person, firm, association, or corporation engaging in a private protective services business as defined in G.S. 74C-3 which provides said services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.
- (8) "Direct supervision" means personal, face to face contact and direction of the trainee's activities on a frequent and reasonable basis.
- (9) "Investigative capacity" means any law enforcement agency position for which the duties include conducting investigations and interviews, completing reports, and testifying in courts or administrative hearings.
- (10) "Law enforcement officer" means a sworn peace officer who has the power of arrest, and who is an employee of the United States, any state, or any political subdivision of a state.
- (11) "Licensee" means any person licensed to perform private protective services in North Carolina in accordance with G.S. Chapter 74C.
- (12) "Proprietary security organization" means any person, firm, association, corporation or department thereof:
- (a) which employs any of the following:
- (i) watchmen,

- (ii) security guards or officers,
- (iii) patrol personnel,
- (iv) armoured car personnel, or
- (v) couriers, and
- (b) which employs these persons regularly and exclusively as an employee in connection with the business affairs of such employer.
- (13) "Qualifying agent" means the individual licensee who is responsible for the private protective services, and who is a resident of North Carolina.
- (14) "Restored" means that an individual is no longer in need of psychiatric care as determined by a physician.
- (15) "Temporary unarmed security officer" means one who is hired for a period of 30 days or less within a calendar year and who is designated as a temporary security officer at the start of employment.

.0105 UNIFORMS AND EQUIPMENT

- (a) no holder of a license, trainee permit, unarmed security guard officer registration, armed security guard officer registration, or firearms trainer certificate while engaged in private protective services, shall wear or display any badge, insignia, device, shield, patch or pattern which shall indicate or tend to indicate that the individual is a sworn law enforcement officer or which contains or includes the work word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency in the local area of the licensee's operations.
- (c) A holder who is required to wear a military style uniform while in the performance of private security services shall have:
- (1) affixed over the left breast pocket of the uniform and on all caps or hats, worn by such individual, badges or patches, distinct in design from those used by law enforcement agencies within the local area of the licensee's operations; or
- (2) affixed over the right breast pocket of the uniform a metal, plastic, or cloth tag not less than three inches nor more than five inches in length and not less than three-fourths inch

nor more than one inch in height containing the words "Security Guard" or "Security Officer" in capital letters approximately one-half inch in height; and

- (3) affixed over the "Security Guard" or "Security Officer" tag, a metal, plastic or cloth tag bearing the name of the wearer. The name tag may be smaller than the "SECURITY GUARD" or "Security Officer" tag if the same is displayed in capital letters five-sixteenth inch to one-half inch in height.

- (4) the wearing of the armed or unarmed Private Protective Services card clearly visible on the outermost garment (except foul weather clothing) shall satisfy the requirements of .0105(c)(1)(2) and (3) above.

(d) All other holders who perform the duties of a security guard or security officer and who are not required to wear a military style uniform shall have affixed over the right or left breast pocket of the outermost garment (except for rainwear or other foul weather clothing) a tag as described in (c)(2) of this Rule, unless exempted by the Administrator.

.0106 PROHIBITED ACTS

- (4) Includes in any advertisement a statement which implies official state authorized certification or approval other than this statement: "Licensed by the Private Protective Services Board of the State of North Carolina." Licensees must include their license number.

.0108 LAW ENFORCEMENT OFFICERS SPECIAL PROVISIONS

- (a) Law enforcement officers may provide security guard officer and patrol services on an individual employer-employee basis to any person, firm, association or corporation which is not engaged in a contract security guard officer and patrol business.
- (b) Law enforcement officers, while off duty, may be employed by a licensed security guard officer and patrol business provided such officer is registered with the board.

- (c) A law enforcement officer employed by a proprietary security organization at times when an officer is not scheduled for work with the employing law enforcement agency shall not be considered as being employed regularly and exclusively as an employee in connection with the business affairs of such employer.
- (d) the provisions of the Rule are in addition to those requirements of G.S. Chapter 74C-16(d).

.0109 RECORDS

- (a) all records required to be maintained by G.S. Chapter 74C or 12 N.C.A.C. 7D shall be subject to inspection by the Board or its designated representative Administrator or his staff upon demand between 8:00 a.m. - 5:00 p.m. Monday through Friday.
- (b) All licensees having registered employees shall submit a copy of their quarterly Employment Security Commission form NCUI 101-625 to the Administrator's Office at the same time the form is submitted to the Employment Security Commission.
- (c) All records required to be kept by 12 N.C.A.C. 7D shall be retained for at least three years.

.0110 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

- (a) The Model Administrative Procedures for Rule-Making and Hearings, codified as Title 22, Subchapters 2B and 2C of the North Carolina Administrative Code, effective September 29, 1980, as amended February 1, 1986, are hereby adopted by reference to apply to actions of the Private Protective Services Board.
- (b) The definitions contained in 22 N.C.A.C. 2A .0005 are adopted by reference and shall apply to the Private Protective Services with the following modifications:
- (1) "Agency" means the Private Protective Services Board;
- (2) "Agency Address" means Private Protective Services Board, Post Office Box 29500, Raleigh, North Carolina 27626-0500; and
- (3) "Agency Head" means

the Chairman of the Private Protective Services Board.
(c) Copies of 22 N.C.A.C., Subchapters 2B and 2C and 22 N.C.A.C. 2A .0105 may be inspected at the agency address and may be obtained from the Administrative Procedures Section of the Attorney General's Office, Raleigh, North Carolina.

SECTION .0200 - LICENSES:
TRAINEE PERMITS

.0201 APPLICATION FOR
LICENSES AND
TRAINEE PERMITS

(a) Each applicant for a license or trainee permit shall submit an original and one copy of the application to the board. The application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) one recent head and shoulders photograph of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of the result of a local criminal history search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 60 months; and
- (4) the applicant's non-refundable application fee.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the board and signed by the applicant and his prospective supervisor stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor.

(c) Private investigator trainees applying for a license must make available for inspection a log of experience on a form provided by the board.

(d) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.

.0203 RENEWAL OR REISSUE
OF LICENSES AND
TRAINEE PERMITS

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form should be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of the result of a local criminal history search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

SECTION .0300 - SECURITY OFFICER
AND PATROL: GUARD DOG SERVICE

.0301 EXPERIENCE REQUIREMENTS
FOR SECURITY OFFICER
AND PATROL LICENSE

(a) In addition to the requirements of 12 N.C.A.C. 7D .0200, applicants for a security guard officer and patrol license shall:

- (1) establish to the board's satisfaction three years experience within the past five years as a manager, supervisor, or administrator with a contract security company or a proprietary security organization performing guard officer and patrol functions; or
- (2) establish to the board's satisfaction three years experience within the past five years as a manager, supervisor or administrator in security with any federal, U.S. Armed Forces, state, county, or municipal law enforcement agency performing guard officer and patrol functions.

(b) The board may give up to two years credit toward the experience requirements set forth in (a)(1) and (2) of this Rule as follows:

- (1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited

- technical institute, college or university;
- (2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or
 - (3) two years of credit for a Bachelor's Degree in Security or Criminal Justice or the equivalent conferred by an accredited college or university.

SECTION .0400 - PRIVATE
INVESTIGATOR;
COUNTERINTELLIGENCE

.0404 REPORTS

(a) Private investigators shall make and offer to each client a written report containing the findings and complete details of the investigation within 30 days or sooner after the completion of the investigation, a copy of which shall be retained by the licensee.

(b) Descriptive reports, chronological reports, cover letters, and itemized invoices to the client shall be personally signed by the licensee. The licensee shall maintain a file copy which shall reflect the names of all participating employees and a description of the work performed by each one. These documents shall be retained by the licensee.

SECTION .0500 - POLYGRAPH

.0503 POLYGRAPH EXAMINATION
REQUIREMENTS

Polygraph licensees and trainees shall comply with the following:

- (1) Obtain written consent from the individual to be examined which shall be signed in the presence of both the examiner and examinee. The consent form shall include a statement advising the examinee that he may terminate the examination at any time;
- (2) Each chart shall be initialed or signed and dated by the examinee and kept by the examiner. The examiner shall label the beginning of the first chart with the following information:
 - (a) name of the examinee,
 - (b) date of the examination,
 - (c) time the examination started,
 - (d) type of examination,

- (e) location of the examination, and
- (f) name of the examiner.

- (3) The examiner shall give the examinee a reasonable opportunity to explain reactions on the charts;
- (4) The examiner shall not issue or permit an employee of his to issue an examination report which is misleading, biased, or falsified;
- (5) Each examination report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on the analysis of the charts;
- (6) All questions to be considered for chart analysis shall be in writing and shall be reviewed with the examinee prior to any testing;
- (7) An examiner shall not make a conclusive verbal or written examination report without having administered two or more tests consisting of the same question; and
- (8) An examiner shall not inquire into the sexual conduct or preferences of a person to whom a polygraph examination is being given unless pertinent to an alleged sex-related crime, nor shall an examiner inquire into the activities, affiliations or beliefs on religion, politics or race, except where there is specific relevancy to an investigation.
- (9) Each chart shall be signed by the examinee and the examiner, and a notation at the end of the chart before the end of the recording; and
- (10) An examiner shall conduct no more than eight examinations per day.

SECTION .0700 - SECURITY
OFFICER REGISTRATION
(UNARMED)

.0701 APPLICATION FOR
UNARMED SECURITY
OFFICER REGISTRATION

- (a) Each applicant for registration or his employer shall submit an application form. Each employer or his designee shall submit and sign an application form for the registration of each

employee to the board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 60 months; and
- (4) the applicant's non-refundable registration fee.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the board.

.0702 FEES FOR UNARMED SECURITY OFFICER REGISTRATION

(a) Registration fees are as follows:

- (1) ten dollars (\$10.00) non-refundable initial registration fee;
- (2) ten dollars (\$10.00) annual renewal, or reissue fee; and
- (3) seven dollars and fifty cents (\$7.50) transfer fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

.0703 MINIMUM STANDARDS FOR UNARMED SECURITY OFFICER REGISTRATION

An applicant for registration shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;

(3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, larceny, and offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of (3) of this Rule, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict of guilty;

- (4) not have been declared by any court of competent jurisdiction incompetent by reason of mental disease or defect; or not have voluntarily committed himself or herself to an institution for treatment of mental disease or defect by a district court judge. When an individual has been treated and found to have been restored by a psychiatrist, the board will consider this evidence and determine whether the applicant meets the requirements of this paragraph; and
- (5) not have had a revocation of a registration.

.0704 INVESTIGATION FOR UNARMED SECURITY OFFICER REGISTRATION

(a) After the administrator receives a complete application for registration, the administrator may cause to be made such further investigation of the applicant as deemed necessary.

(b) Any denial of an applicant for registration by the administrator shall be subject to review by the board.

.0705 UNARMED SECURITY
OFFICER REGISTRATION
IDENTIFICATION CARDS

(a) The registration identification card shall be carried by the registrant when performing the duties of a private protective services employee.

(b) The registration identification card shall be exhibited upon the request of any law enforcement officer or any other authorized representative of the board.

(c) Registration identification card holders shall immediately notify the board upon receipt of any information relating to the holder's eligibility to continue holding such a card.

(d) The guard officer transfer form and fee shall be submitted to the board by the employer within 10 days of the beginning of employment.

(e) Upon revocation or suspension by the board, a holder shall return the registration identification card to the administrator within 10 days of the date of the revocation or suspension.

.0706 RENEWAL OR REISSUE
OF UNARMED SECURITY
OFFICER REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(2) statement of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and

(3) the applicant's renewal fee.

(b) Each applicant for reissue of a registration identification card shall complete, and or his employer shall complete sign a form provided by the board. This form shall be submitted to the board and accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(2) the applicant's renewal fee.

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.

SECTION .0800 - SECURITY
OFFICER REGISTRATION
(ARMED)

.0801 APPLICATION FOR
ARMED SECURITY
OFFICER REGISTRATION

(a) Each applicant for registration or his employer shall submit an application form Each employer or his designee shall submit and sign an application form for the registration of each employee to the board. This form shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 months; and

(4) the applicant's non-refundable registration fee; and

(5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary

registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the board.

(d) The application shall be accompanied by a statement signed by a certified trainer the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807. Applications submitted without firearms certificates shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the administrator and provides satisfactory proof that the applicant has received prior firearms training.

(e) The provisions of (a), (b), and (c) of this Rule shall also apply to any employee whose employment is terminated within 30 days of employment.

.0802 FEES FOR ARMED SECURITY OFFICER REGISTRATION

(a) Registration fees are as follows:

- (1) seventeen dollars and fifty cents (\$17.50) non-refundable initial registration fee; and
- (2) seventeen dollars and fifty cents (\$17.50) annual renewal, or reissue fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

.0803 MINIMUM STANDARDS FOR ARMED SECURITY OFFICER REGISTRATION

Applicants for an armed security guard officer registration shall meet all the requirements of 12 N.C.A.C. 7D .0703.

.0804 INVESTIGATION FOR ARMED SECURITY OFFICER REGISTRATION

(a) After the administrator receives a complete application for registration, the administrator may cause to be made such further investigation of the applicant as deemed necessary.

(b) Any denial of an applicant for registration by the administrator shall be subject to review by the board.

.0805 ARMED SECURITY OFFICER REGISTRATION IDENTIFICATION CARDS

(a) The provisions of 12 N.C.A.C. 7D .0705 are hereby made to apply to armed security guards officers.

(b) Upon termination of employment of an armed security guard, officer, the employer shall return the employee's registration card to the board within 15 days of the employee's termination.

.0806 RENEWAL OF ARMED SECURITY OFFICER REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer shall complete and his employer shall sign a form provided by the board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and
- (3) the applicant's renewal fee.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807.

.0807 TRAINING REQUIREMENTS FOR ARMED SECURITY OFFICER

(a) Applicants for an armed security guard officer registration shall complete a basic training course for armed security guards officer which

consists of a minimum of four hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guards officer ;
 - (2) familiarity with rules and regulations relating to armed security guards officer ;
 - (3) range firing procedures, handgun safety, and maintenance; and
 - (4) Any other topics of armed security guard officer training which the board and the Attorney General deem necessary.
- (b) Applicants shall attain a 70 percent score on firearms course approved by the board and the Attorney General, a copy of which is on file in the administrator's office.

(c) All armed security guards officer training required by 12 N.C.A.C. 7D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard officer registration.

.0809 AUTHORIZED FIREARMS

Armed security guards officers are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard .38 caliber, .32 caliber or .357 caliber revolver or any standard 12 gauge shotgun.

SECTION .0900 - FIREARMS TRAINER CERTIFICATE

.0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the board. The application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) one recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior

- court in each county where the applicant has resided within the immediate preceding ~~24~~ 60 months;
- (4) the applicant's non-refundable application fee; and
- (5) a certificate of successful completion of the training required by 12 N.C.A.C. 7D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the application.

TITLE 16 - PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend regulations cited as 16 NCAC 6C .0101 and .0401-.0404.

The proposed effective date of this action is July 1, 1987.

Statutory Authority: N.C. Constitution, Article IX, Sec. 5; G.S. 115C-12(8); 115C-272; 115C-285; 115C-302; 115C-316; 115C-336; 115C-408.

The public hearing will be conducted at 9:30 a.m. on March 18, 1987 at State Board Room, Third Floor, Education Building, 116 W. Edenton Street, Raleigh, NC.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Harry E. Wilson, Legal Specialist, Department of Public Instruction, 116 W. Edenton Street, Raleigh, NC 27611-1712, (919) 733-3813 by March 18, 1987. The hearing record will remain open for written comments for 30 days from March 18, 1987 through April 17, 1987. Written comments must be sent to the Legal Specialist at the address specified above by April 17, 1987 and must state the rule or rules to which the comments are addressed.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

- (2) "Instructional personnel"

means all teachers as defined by G.S. 115C-325, with the exception of supervisors, and non-teaching principals, assistant principals, social workers, counselors and psychologists. The term includes principals, or assistant principals, or counselors who teach any part of the day, librarians and instructional aides, except that:

- (a) aides are not included for the purpose of applying Rule .0403 of this Subchapter; and
- (b) aides are not included for the purpose of applying Rule .0301 of this Subchapter.

SECTION .0400 - LEAVE

.0401 VACATION LEAVE

(a) All Full-time or part-time permanent public school employees who are working or on paid leave for at least one-half of the calendar days in a month earn vacation leave, based on length of aggregate state service in North Carolina.

(j) Instructional personnel may not take vacation leave on days when students are scheduled to be in attendance. These persons may take vacation leave instead of sick leave on days when students are not scheduled to attend. LEAs may designate specific scheduled workdays for required attendance as long as employees have opportunity to take up to 10 vacation leave days earned in the fiscal annual leave earned during the school year. Employees may charge leave taken only to scheduled teacher workdays and the ten vacation leave days scheduled in the school calendar.

(k) Other employees may take vacation leave instead of sick leave. These employees must have an opportunity to take up to 10 vacation leave days earned in the fiscal annual leave earned in the school year.

.0402 SICK LEAVE

(e) LEAs may advance sick leave not to exceed the amount which would be earned within the calendar school year.

.0403 SUBSTITUTES

(e)

- (2) Unless required to be otherwise, a substitute for the regular teacher is paid from the same source of funds as the regular teacher is paid. Deductions from

the regular teacher's salary for the pay of a substitute is at the short-term rate for the first five days and is at the long-term rate beginning on the sixth consecutive day of absence.

(3) Short-term substitutes are paid at a rate which the SBE determines annually, within funds available for that purpose.

(4) Long-term substitutes are paid the daily rate of a beginning teacher's salary, rounded to the nearest dollar.

(f) Absences not covered in Rule .0404 require the appropriate amount of substitute teacher pay to be deducted from the regular teacher's salary. These absences include extended sick leave as explained in paragraph (g) of this Rule, personal leave and in-state meetings of no longer than three days or out-of-state meetings of no longer than five days, and not to exceed a total of 10 days within the school year, for professional responsibilities and attendance at professional meetings. The superintendent must approve these absences. The time limitations of this Rule do not apply to a person who is the local or district president or president-elect or a state or national officer of an educational professional organization, or to a person selected as National Teacher of the Year from this state.

(g) A teacher may be absent due to personal illness for up to 20 teaching days in excess of accumulated sick leave. After the 20 day period, the LEA shall place the employee on leave of absence without pay for up to 18 calendar months. The superintendent may require a doctor's certificate or other acceptable proof of the reason for the absence.

(g) (h)

(h) (i)

.0404 LEAVE WITH PAY

The LEA will not make deductions from public school employees' salaries in the following cases:

- (1) A teacher is absent due to personal illness for up to 20 teaching days in excess of accumulated sick leave. After the 20 day period, the LEA shall place the employee on leave of absence without pay for up to 10 calendar months. The superintendent may require a

doctor's certificate or other acceptable proof of the reason for the absence.

TITLE 21 - LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Certified Public Accountant Examiners intends to adopt regulation cited as 21 NCAC 8F .0504.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 93-12(5).

The public hearing will be conducted at 9:00 a.m. on April 10, 1987 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, North Carolina 27605.

Comment Procedures: Any person interested in this rule may present written or oral comments relevant to the action proposed at the public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by 12:00 noon, April 7, 1987. Written statements not presented

at the public hearing should be delivered to the Board offices not later than 8:30 a.m., May 12, 1987.

CHAPTER 8 - CPA EXAMINERS

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0500 - APPLICATIONS FOR CERTIFICATES

.0504 ACCOUNTANCY LAW COURSE REQUIREMENT

Effective January 1, 1989, all applicants for certification shall complete an eight-hour course or pass an approved open-book examination on the North Carolina Accountancy Laws and Rules (including the Code of Ethics contained therein) within one year prior to application. Such course or examination is to be the same as approved for CPE credit pursuant to 21 NCAC 8G .0408. Such credit may be reported as CPE credit earned during the first calendar year of certification of the applicant and thus counted toward the applicant's annual CPE requirement.

FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .2200 - JAIL FACILITY HOUSING

.2201 GENERAL

The Department of Correction may utilize jails and local confinement facilities for the custody and care of selected inmates committed to the custody of the department. Hereinafter, the term "jail" shall be construed to include local confinement facilities. The option of using jail facilities to house inmates may be exercised under the following conditions:

- (1) To protect selected inmates from potential harm by other inmates;
- (2) To enable work release placement for selected inmates;
- (3) To provide inmate labor for public work projects; and
- (4) For other purposes at the discretion of the Secretary of Correction.

History Note: Statutory
Authority G.S. 148-11;
148-32.1;
Eff. March 1, 1987.

.2202 REQUIREMENTS

When inmates in the

custody of the department are to be housed at jail facilities, the following requirements must be met:

- (1) A written jail contract will be made with the sheriff or administrator of the local confinement facility for each inmate leaving the custody of the department for housing in a jail facility. The Area Administrator/Institution Head where the inmate was housed is designated by the secretary to serve as the approving authority for jail contracts.
- (2) The jail facility must approximate conditions of confinement available to the inmates if the inmate were to be housed in a Department of Correction facility. Conditions of confinement will include custody, housing conditions, medical services, and program opportunities, and are further specified in the contract and in Rule .2204 of this Section.
- (3) A Department of Correction facility in the same geographic area as the jail facility will be designated as the administrative support unit and will serve as the liaison between the jail facility and the department.
- (4) The jail facility will have a copy of the manual "Operational Guidelines for Use in Jail Facility Housing for Department of Correction Inmates."

History Note: Statutory
Authority G.S. 148-11;
148-32.1;
Eff. March 1, 1987.

.2203 PROCEDURES

The following procedure shall be followed in transferring an inmate committed to the custody of the department to a jail facility:

- (1) The need for jail housing will be documented on Form DC-121 by Department of Correction staff where the inmate is currently assigned. Supporting information will be gathered to justify the housing request. Such information may include:
 - (a) Reports or evidence showing the threat of harm to an inmate if the inmate were to remain in a Department of Correction facility;

- (b) Supporting information showing verified work release employment available to the inmate if the inmate were to be housed in the jail facility; and
- (c) Other information as required to justify assignment to the jail facility.
- (2) Following documentation, the inmate will be assigned to an appropriate Department of Correction facility in the same geographic area as the proposed jail facility. Coordination of out-of-area transfers when necessary will follow established transfer procedures.
- (3) Once assigned, unit or other designated staff will prepare a jail contract and forward the proposed contract with supporting documentation to the Area Administrator/Institution Head for review and approval.
- (4) Area or institution staff will request jail facility housing by forwarding the jail contract to the sheriff or local facility administrator. After the contract is approved by the sheriff or local facility administrator, the Area Administrator/Institution Head will determine if the requirements in Rule 2F .2202 have been met before the inmate is assigned to the jail facility.
- (5) Following final approval for jail facility housing, the inmate will be administratively assigned to the Department of Correction facility designated as the administrative support unit for the jail. Department of Correction staff will transport the inmate to the jail facility.

History Note: Statutory Authority G.S. 148-11; 148-32.1; Eff. March 1, 1987.

.2204 CONDITIONS OF CONFINEMENT

A jail facility housing a Department of Correction inmate will be required to approximate the conditions of confinement available to the inmate if the inmate were to be housed in a Department of Correction facility.

- (a) Custody.
- (1) Unless otherwise

authorized, only minimum custody inmates can be considered for housing in jail facilities.

- (2) The local jail facility must provide the level of supervision required by the inmate's approved custody level as stated in Section 2F .0600 and in the "Operational Guidelines for Jail Facility Housing."
- (3) Approval for promotion of an inmate transferred to a local confinement facility pursuant to this policy to higher levels of minimum custody will be in accordance with established review procedures as stated in Section 2F .0600. Promotions remain at the discretion of the Area Administrator/Institution Head and should be conducted in accordance with the following review process:
 - (A) Jail administrators may request consideration for a change in custody level to the superintendent of the designated administrative support facility;
 - (B) The superintendent of the administrative support facility will document the request for promotion on Form DC-121R, make a recommendation, and forward the request to the Area Administrator/Institution Head for final review and approval; and
 - (C) The action of the approving authority will be documented on Form DC-121R and communicated in writing by the superintendent of the administrative support facility to the sheriff or local facility administrator.
- (b) Program Participation.
 - (1) Participation in any program activity by an inmate transferred to a local confinement facility pursuant to this policy, such as work release, study release, community volunteer leaves, home leaves, or any other program which will extend the limits of confinement beyond the boundaries and supervision of the jail will require prior approval by Division of Prisons approving authorities.
 - (2) Approval for program participation which extends the limits of confinement

for an inmate transferred to a local confinement facility pursuant to this policy will follow the review procedure outlined in Rule 2F .2204(a)(3)(A) in conjunction with policy requirements for each program being considered.

- (3) No inmate transferred to a local confinement facility pursuant to this policy may participate in a program activity which extends the limits of confinement without prior written approval from Division of Prisons approving authorities.

(c) Medical.

- (1) An inmate transferred to a local confinement facility pursuant to this policy who requires emergency medical treatment will be transported immediately by jail authorities or emergency medical personnel to the nearest hospital for treatment. Follow-up notification will be provided by jail authorities to the superintendent of the administrative support facility who will:

(A) Document the requirement for emergency medical treatment;

(B) Arrange for post-emergency care and transfer to a Department of Correction medical facility when necessary; and

(C) Receive and process bills incurred as a result of the emergency medical treatment.

- (2) An inmate transferred to a local confinement facility pursuant to this policy who requires non-emergency medical treatment will be referred by jail authorities to the superintendent of the administrative support facility who will schedule necessary treatment through Department of Correction medical resources.

(d) Inmate Conduct.

- (1) An inmate transferred to a local confinement facility pursuant to this policy is required to abide by the rules and regulations established by the officials governing the operation of the jail as well as rules and regulations established by the Division of Prisons, codified at 5 NCAC 2B .0300.

(2) Violations of these rules by an inmate transferred to a local confinement facility pursuant to this policy shall be reported by jail officials to the superintendent of the designated support facility on Form DC-138B, Statement By Witness, summarizing the misconduct.

- (3) The superintendent will process disciplinary actions against an inmate transferred to a local confinement facility pursuant to this policy in the same manner as is done for an inmate housed in a Department of Correction facility to include:

(A) Designating an investigating officer to investigate the alleged misconduct;

(B) Determining if formal disciplinary action is required;

(C) Determining if a change in the inmate's status, including a return to the custody of the Division of Prisons, is warranted pending a hearing on the matter; and

(D) Other procedures, as required in Rule 2B .0200.

(e) Sentence Reduction Credits.

- (1) An inmate transferred to a local confinement facility pursuant to this policy is eligible for all sentence reduction credits and awards available to an inmate housed in a Department of Correction facility.

(2) Gain time and other credits will be equivalent to those given to inmates housed in Department of Correction facilities who are performing similar duties or are participating in similar programs.

- (3) Sentence reduction credits will be processed by the superintendent of the administrative support facility following receipt of Form DC-455, Sentence Reduction Credits/Awards, from jail officials, in accordance with Section 2B .0100.

History Note: Statutory Authority G.S. 148-11; 148-32.1; Eff. March 1, 1987.

.2205 OTHER REQUIREMENTS

- (a) The superintendent of

the administrative support facility will require Department of Correction staff to conduct periodic reviews of all jail inmates to evaluate progress and program participation and to respond to requests for information from the Parole Commission.

(b) Jail Contract Terms.

(1) Department of Correction, Division of Prisons staff will adhere to the terms of the jail contract.

(2) Jail contracts may be terminated at any time by the sheriff or by Division of Prisons approving authorities.

History Note: Statutory
Authority G.S. 148-11;
148-32.1;
Eff. March 1, 1987.

TITLE 17 - DEPARTMENT OF
REVENUE

CHAPTER 6 - INDIVIDUAL INCOME
TAX

SUBCHAPTER 6B - INDIVIDUAL
INCOME TAX

SECTION .3800 - MISCELLANEOUS
RULES

.3802 DEDUCTIONS

(i) There must be a business connection before a payee or endorser of a note may claim a loss in case of default. The debt must be legal and must exist in fact. The liability of the individual claiming the loss must be one that can be enforced in the courts. In the case of a payee of a note, the note must have been in connection with a transaction from which gain was expected. If a note bears interest, which is payable to the payee of the note, the note is usually considered to have been issued for business purposes. In the case of a loss resulting from an endorser having to pay the obligation, the endorser must have stood to gain either directly or indirectly from the transaction. The endorsement for a member of the endorser's family, for a friend, or for any other person merely as an accommodation is not considered a transaction entered into for profit. On the other hand, an endorsement in an attempt to protect one's investment, such as an endorsement of a corporation note by a stockholder of the corporation, might be construed to have a business connection,

and a loss resulting from such endorsement is usually deductible. Even the endorsement of an employee's note in an effort to retain the services of the employee can in some cases be construed to have a business connection for the purpose of determining whether a loss from the endorsement is deductible. In all cases in which a loss for an endorsement of a note is claimed the endorser must be able to prove a definite business connection.

The time when a loss from a note or note endorsement may be claimed as a deduction is determined by whether the individual is on a cash or an accrual basis. A cash basis taxpayer may claim an allowable loss for a note endorsement at the time payment is made by him and not at an earlier date when it is determined that there will be a loss. If a cash basis taxpayer, who has endorsed a note, gives his own note in payment of his liability as an endorser, he cannot deduct the loss until he pays his note. In the case of an endorsement of a note by an accrual basis taxpayer, the loss may be claimed at the time the amount of the loss may be determined with reasonable accuracy.

The payee of a note on which the maker has defaulted may claim a loss at the time the amount of the loss may be determined with reasonable accuracy, provided the amount claimed has previously been included in income or provided the transaction upon which the note was based was in connection with a trade or business or in connection with a business transaction from which gain was expected.

Effective for tax years beginning after 1986, the reserve method for computing and deducting business bad debts is not allowable. Only those business bad debts which became worthless during the taxable year are deductible. In determining the worthlessness of debts, and the amount to be included in income because of the balance in any reserve for bad debts as of January 1, 1987, federal rules and regulations in effect for the taxable year will be followed to the extent that they are not contrary to the context and intent of state law.

History Note: Statutory
Authority G.S. 105-147(1);
105-147(2); 105-147(7);

105-147(9)a; 105-147(10);
105-147(24); 105-147(28);
105-148(1); 105-148(2);
105-148(8); 105-262;
Eff. February 1, 1976;
Amended Eff. March 1, 1987;
August 1, 1986; June 1, 1982;
April 12, 1981.

CHAPTER 7 - SALES AND USE TAX

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .2800 - FLORISTS; NURSEYMEN; GREENHOUSE OPERATORS AND FARMERS

.2801 IN GENERAL

(b) Retail sales of flowers, potted plants, shrubbery and similar nursery stock and retail sales of fruits, vegetables and other farm products are subject to the three percent sales or use tax unless the product in question is a product of the farm and is sold in its original state by the producer of the product who is not primarily a retail merchant at the location where the product is sold.

(c) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers. Nursery stock which is not sold during the season in which it was purchased by the nurserymen, greenhouse operators and other farmers but is retained until the next season and growth is added thereto by virtue of such retention is considered to be a product of the farm and is exempt from sales and use taxes when sold by such nurserymen, greenhouse operators or farmers who are not selling primarily as retail merchants.

(d) Nurserymen, greenhouse operators and other types of farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants. Such vendors are selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds fifty percent of the total dollar sales volume of their purchased products and their produced products. Such vendors are selling primarily in their capacity as retail merchants when their total

dollar sales volume of purchased products regularly exceeds fifty percent of the total dollar sales volume of their purchased and produced products. Such classification shall remain in effect until either category of sales on a regular basis has changed to another principal type. If such producer-vendors operate more than one location, the preceding is applicable to the total dollar sales volume of each location separately. The total dollar sales volume to be used in determining the classification of "producer" or "retail merchant" shall include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt from tax by the Sales and Use Tax Statutes.

(e) If such vendors are not classified primarily as retail merchants on the basis of the total dollar sales volume, sales of their produced products in the original state are exempt from tax; however, retail sales of any farm products or any other taxable merchandise acquired by purchase are subject to any applicable tax. If such vendors are classified primarily as retail merchants on the basis of the total dollar sales volume, they shall be liable for tax accordingly; i.e., all retail sales of both types of products shall be subject to the tax unless specific sales are statutorily exempt from tax.

(f) When vendors make sales of farm products produced by them and products acquired by purchase, separate records must be maintained of sales of products produced by them. Records of purchased products, as well as sales thereof, must be kept and maintained in a manner that can be accurately and conveniently checked by the agents of the Secretary of Revenue; otherwise, all sales are subject to the tax.

(g) Producers making taxable sales must register with the Department of Revenue for the purpose of collecting and remitting the tax due thereon.

(h) When nurserymen, greenhouse operators, florists or other persons make taxable sales of shrubbery, young trees or similar items, and as a part of the transaction transplant them to the land of the purchaser for a lump sum or a flat rate, the entire amount of the transaction is subject to the three percent rate of tax unless such vendors segregate on

the invoice that portion of the charge which is for the property sold and that portion of the charge which is for transplanting.

(i) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers and; therefore, the fact that they may be selling tangible personal property primarily as a retailer and not as a producer does not preclude certain of their purchases of tangible personal property for use from the one percent state rate of tax with a maximum tax of eighty dollars (\$80.00) per article levied pursuant to G.S. 105-164.4(1)(g). G.S. 105-164.4(1)(g) levies the above state rate of tax on sales to farmers of machines and machinery and parts therefor and accessories thereto for use by them in planting, cultivating, harvesting or curing farm crops. Regulation 17 NCAC 7B .1101 provides additional information regarding the above levy.

History Note: Statutory
Authority G.S. 105-164.4;
105-164.6; 105-164.13;
105-262;
Eff. February 1, 1976;
Amended Eff. March 1, 1987;
June 1, 1985; January 1, 1982;
May 11, 1979.

SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES

.5446 CERTIFICATE OF EXEMPTIONS FROM SALES AND USE TAX FOR CERTAIN TRANSFERS OF MOTOR VEHICLES FORM: E-599T

The Certificate of Exemption From Sales and Use Tax For Certain Transfers of Motor Vehicles Form, E-599T, is for use by taxpayers to certify that the transfer of the vehicle described represents a tax free exchange for Federal Income Tax purposes pursuant to the Internal Revenue Code Sections 351 and 721 and that no consideration other than stocks or securities will pass for the transfer.

History Note: Statutory
Authority G.S. 105-164.4;
105-262;
Eff. March 1, 1987.

SUBCHAPTER 7C - LOCAL GOVERNMENT: MECKLENBURG COUNTY AND SUPPLEMENTAL

LOCAL GOVERNMENT SALES AND USE TAX ACTS

SECTION .0200 - MECKLENBURG COUNTY SALES AND USE TAX ACT

.0204 MAXIMUM TAX

Effective November 1, 1981, the Mecklenburg County Sales and Use Tax Act was amended to delete the ten dollars (\$10.00) maximum tax. The Mecklenburg County sales or use tax without any maximum tax applicable thereto will be due on all taxable sales or purchases of tangible personal property subject to the three percent state sales or use tax on or after November 1, 1981, irrespective of the date the order is placed. The lease receipts derived by lessors on lease agreements negotiated or renegotiated on or after November 1, 1981, to lease tangible personal property which is subject to the three percent state sales or use tax will be subject to the Mecklenburg County sales or use tax without any maximum tax applicable thereto. For information in regard to the application of the Mecklenburg County ten dollars (\$10.00) maximum tax prior to November 1, 1981, see 17 NCAC 7C .0204 as effective February 1, 1976.

History Note: Statutory
Authority G.S. 105-262;
S.L. (1967), Ch. 1096,
s. 4 and 5;
Eff. February 1, 1976;
Amended Eff. March 1, 1987;
February 1, 1987;
January 1, 1982.

CHAPTER 9 - GASOLINE TAX DIVISION

SUBCHAPTER 9F - DIVISIONAL RULES

.0001 LOCATION

The Motor Fuels Tax Division is located in the Revenue Building in Raleigh, North Carolina.

The mailing address of the division is P.O. Box 25000, Raleigh, North Carolina 27640.

The Motor Fuels Tax Division has four field offices. They are located in:

- (1) Charlotte, North Carolina;
- (2) Fayetteville, North Carolina;
- (3) Greensboro, North Carolina;
- (4) Winston Salem, North Carolina.

History Note: Statutory
Authority G.S. 105-430
through 105-449.56;
119-15 through 119-22;
143B-20; 143B-221;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0002 GENERAL PURPOSES

The Motor Fuels Tax Division is responsible for administering Subchapter V, Article 36, Gasoline Tax; Article 36A, Special Fuels Tax; and Article 36B, Highway Fuel Use Tax Act; of the Revenue Laws of North Carolina.

The division is also responsible for administering the collection of the inspection fees due under the Gasoline and Oil Inspection Law (Article 3, Chapter 119 of the General Statutes), although the inspection function is required by law to be accomplished by the Department of Agriculture.

History Note: Statutory
Authority G.S. 105-430
through 105-449.56;
119-15 through 119-22;
143B-10; 143B-221;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0003 DIVISIONAL ORGANIZATION

The Motor Fuels Tax Division is administered by a director and assistant director. The division is divided into three sections: administrative, office operations and audit section.

(1) The administrative section includes the director, assistant director, revenue administration officer, and two secretaries. It is the responsibility of the director and assistant director to administer the entire operations of the division. They handle personnel matters in conjunction with the section supervisors; devise rules and regulations; resolve controversial issues; conduct conferences with taxpayers and their representatives; represent the department in hearings before the Secretary of Revenue and generally direct the activities of the division. It is the responsibility of the revenue administration officer to carry out duties assigned and delegated to him by the director and assistant director.

(2) The office operations

section receives and processes gasoline, special fuels and highway fuel use reports as well as quarterly and annual refund claims for motor fuels. This section issues vehicle fuel registrations and temporary emergency permits and is responsible for the accounting functions. An administrative assistant directs the operations of this section.

(3) The field audit section is responsible for making the necessary field audits for all schedules administered by the Motor Fuels Tax Division. The assistant director directs the operations of this section.

History Note: Statutory
Authority G.S. 105-430
through 105-449.56;
119-15 through 119-22;
143B-10; 143B-221;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SUBCHAPTER 9G - GASOLINE TAX

SECTION .0100 - APPLICATION FOR AND CANCELLATION OF LICENSE AS A DISTRIBUTOR

.0102 DISTRIBUTORS CLASSIFIED ACCORDING TO TYPES OF OPERATIONS

Any distributor licensed under G.S. 105-433 who imports gasoline into North Carolina by pipeline or seagoing vessel and operates a terminal facility at a pipeline port or seaport for sale or delivery of gasoline to other distributors shall be known as a gasoline supplier. Any distributor licensed under G.S. 105-433 who does not import gasoline into North Carolina by pipeline or seagoing vessel, nor operate a terminal facility at a pipeline port or seaport for sale or delivery to other distributors shall be known as a gasoline distributor.

History Note: Statutory
Authority G.S. 105-262;
105-433; 105-434;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0105 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas 1212, furnished by this department, which have been properly executed by any surety company authorized to do

business in this state. The department will also accept the following collateral bonds:

- (1) Negotiable U.S. government bonds;
- (2) State of North Carolina bonds;
- (3) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (4) Stock of North Carolina savings and loan associations;
- (5) Stock of federal savings and loan associations, which associations must be a member of the Federal Home Loan Bank System, and its stock guaranteed by such bank.

History Note: Statutory
Authority G.S. 105-262;
105-433;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0106 CANCELLATION OF LICENSE AND BOND

Any person not in compliance with the provisions of G.S. 105-441 or 105-442 may have his license cancelled. The Secretary of Revenue will notify him at his last known address by registered mail. Further, the Secretary of Revenue will notify the distributor's supplier of such cancellation by letter or telegram.

History Note: Statutory
Authority G.S. 105-262;
105-441; 105-442;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0200 - FIRST SALE TO LICENSED DISTRIBUTORS FROM PIPELINE OR PORT TERMINALS

.0201 TRANSPORT SALES

The first sale in North Carolina at pipeline or port terminals in tank car or transport truck shipments to licensed distributors within the state must be made less the North Carolina road tax and inspection fee. The tax shall be levied against and paid by such licensed distributors. Only the first sale may be made less the tax and inspection fee.

History Note: Statutory
Authority G.S. 105-262;
105-432;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0203 TRANSPORT LOADS

A tank car or transport

truck load may consist of gasoline and kerosene or may consist of kerosene and fuel oil.

History Note: Statutory
Authority G.S. 105-262;
105-432;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0204 EXCHANGE AGREEMENTS

Exchange agreement contracts at pipeline or seaport terminals between suppliers, in instances where one supplier receives gasoline on exchange and repays the same quantity of gasoline, do not constitute sales from one to the other and will not be considered a "first sale" within the interpretation of G.S. 105-432. Sales from suppliers to licensed distributors would be the "first sale" in North Carolina.

History Note: Statutory
Authority G.S. 105-262;
105-432;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0300 - REPORTING REQUIREMENTS

.0301 METHODS OF REPORTING THE TAX

Every gasoline distributor may elect to report on the "sales basis" or "receipts basis" of computing the tax and inspection fees. A distributor that has elected to report and pay the tax on the "sales basis" computes the tax and inspection fees on total gallons of gasoline sold, delivered to dealers on consignment, used, or disbursed for use during a calendar month. A distributor that has elected to pay the tax on the "receipts basis" computes the tax and inspection fees on the total gallons of gasoline purchased or imported during a calendar month, reduced by the total gallons delivered out of this state, and further reduced by the rate allowance allowed by G.S. 105-434. A distributor that has elected to pay on the "sales basis" or "receipts basis" shall not change methods of reporting without written permission from the director of the Motor Fuels Tax Division.

Every gasoline supplier may elect to report on the "sales basis" or "receipts basis" of computing the tax and inspection fees. A gasoline supplier that has elected to report and pay the tax on the

"sales basis" computes the tax and inspection fees on the total gallons of gasoline sold, delivered to dealers on consignment, used or disbursed for use during a calendar month. A gasoline supplier that has elected to report and pay the tax on the "receipts basis" may elect one of the following methods as the basis of reporting receipts:

- (1) first receipts; tax and inspection fees accrue at the time gasoline or kerosene is received at the port of entry, port terminals or other port of receipts;
- (2) terminal disbursements; tax and inspection fees accrue at the time gasoline and kerosene is disbursed from North Carolina seaport or pipeline terminals or received at other ports of entry or other points of receipt.

A gasoline supplier that has elected to pay on the "sales basis" or the "receipts basis" shall not change methods of reporting without written permission from the director of the Motor Fuels Tax Division.

History Note: Statutory
Authority G.S. 105-262;
105-434;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0303 CONSIGNMENT SERVICE STATIONS

A distributor using the sales method of paying the road tax and inspection fee must report and pay the tax on gallons delivered to consignment locations.

History Note: Statutory
Authority G.S. 105-262;
105-434;
Eff. January 1, 1983
Amended Eff. March 1, 1987.

.0305 ALL PURCHASES AND RECEIPTS MUST BE REPORTED

History Note: Statutory
Authority G.S. 105-262;
105-434; 105-436;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0307 REFUND ON TAX PAID MOTOR FUEL TRANSPORTED TO ANOTHER STATE

History Note: Statutory
Authority G.S. 105-262;
105-446.6;

Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

SECTION .0400 - REBATES FOR FUELS SOLD TO THE UNITED STATES GOVERNMENT AND PUBLIC SCHOOLS

.0401 DELIVERIES TO THE NATIONAL GUARD

Gasoline sales to the National Guard, paid for by state funds are not exempt from the gasoline tax. Gasoline sales to the National Guard, approved by the Guard, and paid for by the United States Government are exempt from the gasoline tax.

History Note: Statutory
Authority G.S. 105-262;
105-439;
Eff. January 1, 1983;
Amended March 1, 1987.

.0403 SALES TO U.S. GOVERNMENT: REFUND FORM GAS. 1206

(a) The first section of form 1206 is to be completed by vendors that have sold tax paid motor fuels to the U.S. Government at a price that did not include the road tax. Copies of sales invoices must be submitted with the application.

(b) The second section of form 1206 is to be completed by U.S. Government agencies to secure refunds on the road tax on motor fuels that were purchased at a price that included the road tax. Copies of purchase invoices must be submitted with the application.

History Note: Statutory
Authority G.S. 105-262;
105-439;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0404 EXEMPTION OF MOTOR FUELS: PUBLIC SCHOOL TRANSPORTATION

An application for, and the acceptance of a credit card for the purchase of motor fuels by a city or county board of education shall constitute a "contract" as required by G.S. 105-449. If a purchase of motor fuel is for a dollar amount that is less than the amount that requires vendors by law to have a state contract then G.S. 105-449 does not require the vendor to hold a state contract. The sales invoice for motor fuels, signed by a person authorized to purchase motor fuels for a city or county board of education, shall constitute a

"purchase order" as required by G.S. 105-449.

History Note: Statutory
Authority G.S. 105-262;
105-449;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0500 - REFUNDS

.0501 NON-HIGHWAY REFUND

Persons using tax paid motor fuels in other than licensed vehicles must file Form Gas. 1201, non-highway refund application, to obtain a refund of tax paid on motor fuels.

This application requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

History Note: Statutory
Authority G.S. 105-262; 105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0502 NON-HIGHWAY REFUND APPLICATION INFORMATION

The following information must be given on applications for refund of tax paid on motor fuels used for non-highway purposes:

- (1) Name of machinery or equipment in which fuel will be used and engine or motor number;
- (2) Type of storage equipment used for storing gasoline used for highway and non-highway purposes and storage capacity;
- (3) If the applicant is a farmer, each kind of crop and number of acres under cultivation;
- (4) Make, type of vehicles, model and license number, if fuel is used in licensed motor vehicles from the same storage tank from which non-highway equipment is serviced;
- (5) Number of gallons of fuel on hand at the beginning of refund period and number of gallons on hand at the end of the refund period;
- (6) Number of gallons used for non-highway purposes; and if gasoline is used from same storage to operate both licensed motor vehicles and non-highway equipment, the number of gallons used during the refund period in licensed motor vehicles;
- (7) Application shall be made upon affirmation.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0503 NON-HIGHWAY REFUND INVOICE REQUIREMENTS

An invoice for each purchase of motor fuels must be submitted with the application for refund for purchases made for non-highway use during the refund period. Invoices must show the date of purchase, name of both purchaser and seller, gallons purchased, price per gallon and amount paid. A daily, weekly or monthly statement of purchases of motor fuels is acceptable provided it is prepared by the seller, and shows all of the information on each purchase of motor fuels that is required on an individual invoice. Invoices and statements showing alterations or erasures are not acceptable. If no claim was filed for the preceding refund period, an invoice or statement of purchases must be attached to substantiate inventory at the beginning of the refund period.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0504 NON-HIGHWAY USERS WITH COMMON STORAGE FACILITIES

No refund is due on motor fuels used to operate the engine of a motor vehicle licensed to travel on the streets and highways, unless otherwise provided by law. If motor fuel is used from the same storage tank from which licensed motor vehicles and non-highway equipment are serviced, a daily use record must be kept to substantiate the amount withdrawn for licensed motor vehicles or non-licensed equipment. These records are to be kept for three calendar years from the date the refund application was due to be filed.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0505 STATIONARY ENGINE MOUNTED ON A LICENSED MOTOR VEHICLE

No refund is due on motor fuels

used to operate a stationary engine mounted on a licensed motor vehicle, except concrete mixer vehicles, solid waste compacting vehicles and certain agricultural delivery vehicles as defined by G.S. 105-446.5 if motor fuel is used from the same storage tank mounted on the vehicle for the purpose of operating both the stationary engine and the engine used to propel a licensed motor vehicle over the streets and highways.

History Note: Statutory
Authority G.S. 105-262;
105-446; 105-446.5;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0507 DEALERS DELIVERING FUEL
INTO NON-HIGHWAY
EQUIPMENT

Dealers of non-highway equipment powered by motor fuel are entitled to a refund on motor fuel placed into their equipment provided there is no charge for the fuel when the equipment is sold. If the motor fuel is sold, the purchaser is entitled to refund on the fuel purchased and used.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended March 1, 1987.

.0508 VEHICLES WITH SPECIAL
MOBILE EQUIPMENT LICENSE

A claimant operating a vehicle with a special mobile equipment tag is not entitled to a refund on any fuel that is used while operating the motor vehicle on the streets and highways.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0509 REMOVAL OF LICENSE PLATE

In order to obtain a refund, a person may remove his license plates and surrender the plates to the Commissioner of Motor Vehicles, or his agents, or the Motor Fuels Tax Division, North Carolina Department of Revenue, for the period the vehicles will not be operating on the streets and highways.

Any person requesting refund on tax paid motor fuel used in motor vehicles on which the license plates have not been removed and surrendered to the Commissioner of Motor Vehicles,

or his agents, or the Motor Fuels Tax Division, may have his refund claim reduced or disallowed.

History Note: Statutory
Authority G.S. 105-262;
105-446;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0510 COUNTIES: CITIES AND
OTHERS: FORM GAS. 1200

The Board of Transportation, counties, municipal corporations, volunteer fire departments, county fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized and approved by the Department of Human Resources, city transit systems and private non-profit organizations transporting passengers under contract with or at the express designation of units of local government must file Form Gas. 1200 to obtain a refund of tax paid on motor fuels.

The application requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

History Note: Statutory
Authority G.S. 105-262;
105-446.1; 105-446.3;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0511 CITY TRANSIT AND
PRIVATE NON-PROFIT
REFUND

History Note: Statutory
Authority G.S. 105-262;
105-446.3;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0513 TAXICAB REFUNDS:
FORM GAS. 1200B

Operators of taxicabs must file Form Gas. 1200B to obtain a refund of tax paid motor fuels used in transporting fare-paying passengers.

The report requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

History Note: Statutory
Authority G.S. 105-262;
105-446.3;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0514 CONCRETE MIXER REFUND:

FORM GAS. 1200C

Operators of concrete mixing vehicles, solid waste compacting vehicles and agricultural delivery vehicles as defined by G.S. 105-446.5 must file Form Gas. 1200C to obtain a refund of tax paid motor fuels used in the operations of such vehicles.

This application requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

The following records must be kept to support refund applications:

- (1) Mileage records, by vehicle;
- (2) Fuel records, by vehicle;
- (3) Cubic yards of concrete mix delivered, by vehicle; or tons of compact waste hauled, by vehicle; or tons of bulk feed or fertilizer hauled, by vehicle.

Applications must be completed in accordance with instructions as shown on the reverse side of the application form.

History Note: Statutory
Authority G.S. 105-262;
105-446.5;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0515 REFUND OF TAXES PAID ON GASOHOL: FORM GAS. 1221

History Note: Statutory
Authority G.S. 105-262;
105-446.3.1;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

SUBCHAPTER 9H - SPECIAL FUELS TAX

SECTION .0100 - SPECIAL FUELS LICENSES

.0102 AMOUNT OF BOND REQUIRED

Suppliers of special fuels are required to furnish the Motor Fuels Tax Division a surety bond based on monthly road tax due on company use and sales in accordance with the amounts set forth in the following schedule:

Road Tax Due Per Month:
Bond Required:

\$ -	225.00	500.00
\$ 225.01-	900.00	2,000.00
\$ 900.01-	1,350.00	3,000.00
\$ 1,350.01-	1,800.00	4,000.00
\$ 1,800.01-	2,250.00	5,000.00
\$ 2,250.01-	2,700.00	6,000.00

\$ 2,700.01-	3,600.00	8,000.00
\$ 3,600.01-	5,400.00	12,000.00
\$ 5,400.01-	7,200.00	16,000.00
\$ 7,200.01-	9,000.00	20,000.00
\$ 9,000.01-	10,800.00	25,000.00
\$ 10,800.01-	12,600.00	30,000.00
\$ 12,600.01-	14,400.00	35,000.00
\$ 14,400.01-	and over	40,000.00

(\$40,000 is the maximum bond required by law.)

History Note: Statutory
Authority G.S. 105-262;
105-449.5; 105-449.32;
Eff. January 1, 1983;
Amended Eff. August 1, 1983;
March 1, 1987.

.0103 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by the department, which have been properly executed by any surety company authorized to do business in this state. The department will also accept the following collateral bonds:

- (1) Negotiable U.S. government bonds;
- (2) State of North Carolina bonds;
- (3) Certificates of deposit or cashiers' checks, made payable to the taxpayer;
- (4) State of North Carolina savings and loan associations;
- (5) Stock of federal savings and loan associations, which associations must be a member of the Federal Home Bank System, and its stock guaranteed by such bank.

History Note: Statutory
Authority G.S. 105-449.5;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0200 - CONSIGNMENT SERVICE STATIONS: SALES INVOICES: TAX FREE DELIVERIES

.0201 TAX DUE

The road tax and inspection fee is due on sales of fuels intended to propel a motor vehicle that are made by suppliers to users, bulk users or resellers. Suppliers are required to collect and remit the motor fuels tax and inspection fee on all sales of special fuels to bulk users and resellers except deliveries into separate tanks that are for non-highway use only and are plainly marked "for non-highway use only." A supplier that makes deliveries of special

fuels to resellers on consignment may elect to pay the road tax and inspection fee on the total number of gallons delivered into storage for highway use or the total gallons withdrawn from storage for highway use. Bulk users and resellers are not permitted to have common storage of tax free fuel for highway use and non-highway use.

History Note: Statutory
Authority G.S. 105-449.16;
105-449.17; 105-449.19;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0202 COMPANY OPERATED
STATIONS: DELIVERY
Special fuels transferred
by a supplier to his company
operated service stations remain
stored and is not sold,
delivered or used.

History Note: Statutory
Authority G.S. 105-449.16;
105-449.19; 105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0203 COMMON STORAGE
Suppliers selling special fuels
at retail from a common storage
tank at a supplier's company
operated service station must
have separate metered dispensers
for highway and non-highway use.
The non-highway dispenser must
be marked "for non-highway use
only."

History Note: Statutory
Authority G.S. 105-449.16;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0204 TAX FREE DELIVERIES

History Note: Statutory
Authority G.S. 105-449.17;
105-449.32;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0205 REFUND ON TAXPAID MOTOR
FUEL TRANSPORTED TO
ANOTHER STATE

History Note: Statutory
Authority G.S. 105-262;
105-449.31;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0206 RESELLER REQUIRED TO
KEEP METER READINGS
Resellers of special fuels must
maintain records of totalizer
meter readings showing the total

gallons dispensed by pumps
dispensing special fuels and by
pumps dispensing non tax paid
fuels.

History Note: Statutory
Authority G.S. 105-449.10;
105-449.17; 105-449.32;
Eff. August 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0300 - LIQUIFIED PETROLEUM GAS

.0301 LP GAS DISTRIBUTORS USING OR SELLING

Liquified petroleum gas
distributors using and/or
selling special fuels are
defined as suppliers. It is
unlawful for a supplier to sell
and/or use special fuels without
first obtaining a supplier's
license issued by the Motor
Fuels Tax Division. No fee is
due for the license, and it is
continuous until cancelled by
the Department of Revenue or
licensee.

History Note: Statutory
Authority G.S. 105-449.2
through 105-449.8; 105-449.19;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0303 ODOMETER READINGS

It is necessary for suppliers
reporting and paying tax on the
mileage basis to keep accurate
records of the number of miles
driven each month and to be sure
that the odometer indicates the
correct miles traveled. LP gas
suppliers using special fuels
from separate supply tanks are
also required to keep odometer
mileage records for each motor
vehicle operated.

History Note: Statutory
Authority G.S. 105-449.2
through 105-449.8;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0304 TAXABLE SALES AND DELIVERIES: LP GAS SUPPLIERS

LP gas suppliers, as well as
other suppliers of special
fuels, must pay road tax and
inspection fees on all sales or
deliveries into licensed motor
vehicles and all sales or
deliveries to resellers and bulk
users unless the delivery is
made into a separate tank for
non-highway use that is plainly
marked to indicate that the fuel
contained therein is for
non-highway use only.

Suppliers cannot deliver fuel into the motor fuel supply tank on another supplier's licensed motor vehicle unless the delivering supplier remits the road tax and inspection fees.

History Note: Statutory
Authority G.S. 105-449.16
through 105-449.17; 105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0400 - EXEMPTIONS: REFUNDS AND LOSSES

.0402 NON-HIGHWAY REFUNDS

The Special Fuels Tax Act, consistent with the Gasoline Tax Act, provides for refunds of tax paid special fuels used in non-licensed equipment.

Special fuels must be accounted for in the same manner and in conjunction with gasoline as outlined in 17 NCAC 9G .0501 through 17 NCAC 9G .0509.

History Note: Statutory
Authority G.S. 105-446;
105-449.24; 105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0403 CITIES: COUNTIES AND OTHER REFUNDS

The Special Fuels Tax Act, consistent with the Gasoline Tax Act, provides for refunds of tax paid special fuels to the Board of Transportation, counties, municipal corporations, volunteer fire departments, county fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized and approved by the Department of Human Resources, city transit systems and private non-profit organizations transporting passengers under contract with or at the express designation of units of local government.

Special fuels must be accounted for in the same manner and in conjunction with gasoline as outlined in 17 NCAC 9G .0510.

History Note: Statutory
Authority G.S. 105-446.1;
105-446.3; 105-449.24;
105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0404 CITY TRANSIT AND PRIVATE NON-PROFIT REFUND

History Note: Statutory
Authority G.S. 105-446.3;
105-449.24; 105-449.32;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0407 CONCRETE: WASTE AND AGRICULTURAL DELIVERY VEHICLES

The Special Fuels Tax Act, consistent with the Gasoline Tax Act, provides for refunds of tax paid special fuels used in operating concrete mixing vehicles, solid waste compacting vehicles, and certain agricultural delivery vehicles as defined by G.S. 105-446.5.

Special fuels must be accounted for in the same manner and in conjunction with gasoline as outlined in 17 NCAC 9G .0514.

History Note: Statutory
Authority G.S. 105-446.5;
105-449.24; 105-449.32;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0408 EXEMPTION OF MOTOR FUELS: PUBLIC SCHOOL TRANSPORTATION

The Special Fuels Tax Act, consistent with the Gasoline Tax Act, provides that special fuels sold to city and county boards of education are exempt from the road tax.

Special fuels sold to city and county boards of education must be accounted for in the same manner and in conjunction with gasoline as outlined in 17 NCAC 9G .0404.

History Note: Statutory
Authority G.S. 105-262;
105-449; 105-449.24;
Eff. March 1, 1987.

SUBCHAPTER 9I - HIGHWAY FUEL USE TAX

SECTION .0100 - OPERATIONS

.0101 OPERATIONS SUBJECT TO TAX

History Note: Statutory
Authority G.S. 105-262;
105-449.37;
Eff. January 1, 1983;
Repealed Eff. March 1, 1987.

.0102 OPERATIONS OF VEHICLES EXCLUDED FROM REPORTS

(a) Miles traveled and fuel purchased for or used by vehicles that did not enter North Carolina during a quarter shall not be included in the highway fuel use tax report for that quarter.

(b) Miles traveled and fuel purchased for or used by vehicles that traveled wholly within North Carolina during a quarter shall not be included in the highway fuel use tax report

for that quarter. Vehicles using special fuels that operate wholly within North Carolina must be reported on the appropriate special fuels report, i.e.; supplier, reseller, bulk user or user.

History Note: Statutory
Authority G.S. 105-262;
105-449.32; 105-449.37;
105-449.45;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0103 REGISTRATION CARDS AND VEHICLE IDENTIFICATIONS

Every "motor carrier", as defined by G.S. 105-449.37, that operates or causes to be operated a motor vehicle with out-of-state license plates subject to G.S. 105-449.47 shall obtain a registration card and vehicle identification marker for each such vehicle before it is operated or caused to be operated on any street or highway in North Carolina. Every vehicle required to be registered under G.S. 105-449.47 that has a North Carolina license plate shall be registered with the Commissioner of Motor Vehicles at the time the license plates are purchased, for purposes of the tax imposed by this Article. The "motor carrier" shall file all highway fuel use tax reports required under Article 36B.

The lessee of a motor vehicle and not the lessor is a "motor carrier" except when a lessor of a motor vehicle gives written notice to the secretary that the lessor desires to be treated as a "motor carrier". When a vehicle subject to this Article is being operated under a trip lease, the owner of the vehicle shall obtain the permit. The trip lessor may elect to report trip lease operations as provided in G.S. 105-449.42A(b), however, the owner shall report operations while not under trip lease.

History Note: Statutory
Authority G.S. 105-262;
105-449.32; 105-449.37;
105-449.45;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0200 - NORTH CAROLINA FUEL PURCHASES

.0202 WITHDRAWALS FROM BULK STORAGE

A person maintaining bulk storage of North Carolina tax paid motor fuel is entitled to

credit on the highway fuel use tax report based on the date the fuel is put into the motor vehicle, not on the date of purchase.

A accounting of tax paid motor fuels purchased and used by any person maintaining bulk storage of tax paid motor fuel in North Carolina is required.

History Note: Statutory
Authority G.S. 105-262;
105-449.39;
Eff. January 1, 1987;
Amended Eff. March 1, 1987.

SECTION .0300 - CREDITS AND REFUNDS

.0304 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this department, which have been properly executed by any surety company authorized to do business in this state. The department will also accept the following collateral bonds:

- (1) Negotiable U.S. government bonds;
- (2) State of North Carolina bonds;
- (3) Certificates of deposit or cashiers' checks, made payable to the taxpayer;
- (4) Stock of North Carolina savings and loan associations;
- (5) Stock of federal savings and loan associations, which associations must be a member of the Federal Home Loan Bank System, and its stock guaranteed by such bank.

History Note: Statutory
Authority G.S. 105-262;
105-449.40;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

SECTION .0400 - TAX REPORTS AND MILES PER GALLON FACTORS

.0401 QUARTERLY TAX REPORT

Persons operating heavy vehicles subject to the highway fuel use tax must file a highway fuel use tax quarterly report.

The report requires a computation of North Carolina fuel used. Credit is allowed on North Carolina tax paid fuels purchased.

North Carolina fuel used is computed by applying the North Carolina percentage factor of overall miles to the overall fuel consumed. See 17 NCAC 9I .0102 for explanation of certain vehicle exclusions.

History Note: Statutory
Authority G.S. 105-262;
105-449.39; 105-449.42;
105-449.44 through 105-449.45;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

**.0402 AVERAGE MILES PER GALLON
FACTORS**

The amount of fuel used in North Carolina is determined by dividing total miles into North Carolina miles and applying the North Carolina mileage factor to the total fuel used.

The Department does not have the authority to grant carriers the privilege of basing their reports on an estimated miles per gallon factor.

In the absence of records substantiating total miles and/or total fuel, audits will be based on average miles per gallon factors of other carriers with similar equipment and similar operations.

The use of a miles per gallon factor on an audit is not an authorization for filing future reports on an average miles per gallon factor.

Audits will be based on current information of carriers maintaining complete and accurate records as required by statute.

History Note: Statutory
Authority G.S. 105-262;
105-449.44 through 105-449.45;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

**.0403 COMPANY FACTOR: LEASE
UNITS**

A motor carrier leasing units from other carriers and also operating company owned units may use the company miles per gallon factor to arrive at the North Carolina fuel used for leased units provided:

- (1) The company owned equipment is similar in size, type, gross weight and engine performance;
- (2) The company owned equipment uses the same type fuel as the leased units;
- (3) The mileages are calculated from the same basis. A motor carrier using odometer readings in arriving at total and North Carolina miles on company units must also use odometer readings in arriving at miles on leased units.

History Note: Statutory
Authority G.S. 105-262;
105-449.44 through

105-449.45;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

**SECTION .0500 - REGISTRATION
CARDS AND IDENTIFICATION MARKERS**

**.0501 APPLICATION FOR VEHICLE
REGISTRATION: FORM
GAS. 1274**

Application for vehicle registration, Form Gas. 1274, is filed by interstate operators of heavy vehicles licensed in jurisdictions other than North Carolina. Applicants are issued a registration card and vehicle identification marker for each heavy vehicle at a charge of ten dollars (\$10.00) per vehicle.

The applicant must show the make, serial number, state in which the vehicle is licensed, type of vehicle (truck or bus) and type of fuel used.

The applicant must complete a questionnaire regarding the storage and use of special fuels.

History Note: Statutory
Authority G.S. 105-262;
105-449.3; 105-449.9;
105-449.32; 105-449.45;
105-449.47 through 105-449.48;
105-449.50;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

**.0502 REGISTRATION OF HEAVY
VEHICLES LICENSED IN
NORTH CAROLINA**

Motor carriers operating a heavy vehicle that is licensed in North Carolina pay the ten dollars (\$10.00) fuel registration fee at the time the license plate is purchased. The motor carrier must complete a questionnaire from the Motor Fuels Tax Division regarding special fuels.

Motor carriers operating all vehicles wholly within North Carolina are exempted from filing quarterly highway fuel use reports; however, motor carriers and operators of vehicles licensed under the motor vehicle laws for over 6,000 pounds must register with the Motor Fuels Tax Division and file all applicable reports under the Special Fuels Tax Act.

History Note: Statutory
Authority G.S. 20-88.01;
105-262; 105-449.3;
105-449.9; 105-449.32;
105-449.45; 105-449.47;
105-449.48; 105-449.50;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0503 PERMITS: LEASES

A lessee leasing units from other operators should not apply for the registration card and vehicle identification marker unless the lessor is permanently leased to the lessee.

A lessee who has obtained a registration card and vehicle identification marker for a vehicle under permanent lease must return the card and marker to the Motor Fuels Tax Division if the lease is cancelled for any reason.

History Note: Statutory
Authority G.S. 105-262;
105-449.37;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0504 NO VEHICLE REGISTRATION
REQUIRED

A motor vehicle not designed for the purpose of pulling a trailer by the manufacturer and is not modified to the extent that the vehicle becomes a tractor-type truck for the purpose of pulling a trailer is not required to be registered.

- (1) A person installing a trailer hitch on a pickup truck to pull a mobile home does not have to register the vehicle;
- (2) A person who shortens the bed of a pickup truck to pull a mobile home does have to register the vehicle.

History Note: Statutory
Authority G.S. 105-262;
105-449.47 through 105-449.49;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0506 DEALER: MANUFACTURER:
DRIVEAWAY: TRANSPORTER

Persons operating heavy vehicles with a dealer, manufacturer, driveaway or transporter license plate, issued either in North Carolina or other jurisdictions must obtain a fuel registration card, but not a vehicle identification marker, from the Motor Fuels Tax Division. The charge is ten dollars (\$10.00) per vehicle. These vehicles must have a fuel registration card at all times while operating in North Carolina.

History Note: Statutory
Authority G.S. 105-262;
105-449.45; 105-449.47;
105-449.48; 105-449.50;
Eff. March 1, 1987.

SUBCHAPTER 9J - GASOLINE:
SPECIAL FUELS AND KEROSENE
INSPECTION

SECTION .0200 - KEROSENE
IMPORTER

.0201 BOND AND LICENSE
REQUIRED

Any person importing kerosene, or having in his possession kerosene on which the inspection fee has not been paid, and not required to be licensed under the provision of G.S. 105-433 must obtain a license and bond as a kerosene distributor from the Secretary of Revenue. (see 17 NCAC 9J .0202)

History Note: Statutory
Authority G.S. 105-262;
105-269.3; 119-16.2;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0203 TYPES OF ACCEPTABLE
BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this department, which have been properly executed by any surety company authorized to do business in this state. The department will also accept the following collateral bonds:

- (1) Negotiable U.S. government bonds;
- (2) State of North Carolina bonds;
- (3) Certificates of deposit or cashiers' checks, made payable to the taxpayer;
- (4) Stock of North Carolina savings and loan associations;
- (5) Stock of federal savings and loan associations, which associations must be a member of the Federal Home Loan Bank System, and its stock guaranteed by such bank.

History Note: Statutory
Authority G.S. 105-262;
105-269.3; 119-16.2;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

.0204 REPORT OF KEROSENE
DISTRIBUTOR: FORM GAS
1219

Any person licensed as a kerosene distributor must file monthly crossline report Form Gas. 1219 within 20 days following the close of each calendar month listing each delivery of kerosene by date, and showing each invoice number, customer's name, customer's address and total gallons purchased by each customer

during the month for which the
report is filed.

History Note: Statutory
Authority G.S. 105-262;

105-269.3; 119-16;
119-18;
Eff. January 1, 1983;
Amended Eff. March 1, 1987.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION XI, NO. 4

EFFECTIVE: February 1, 1987

AGENCY		ACTION TAKEN	
<u>ADMINISTRATION</u>			
1	NCAC 12	.0602-.0605	Adopted
		.0702-.0703	Adopted
		.0705-.0806	Adopted
		.0808-.0901	Adopted
		.0903-.1004	Adopted
		.1006	Adopted
		.1008-.1009	Adopted
		.1203-.1401	Adopted
		.1403-.1405	Adopted
		.1501-.1603	Adopted
<u>CULTURAL RESOURCES</u>			
7	NCAC 40	.0101	Amended
		.0104	Amended
		.0304	Amended
	4Q	.0105	Amended
	4R	.1102	Amended
		.1301	Amended
	5	.0203	Amended
		.0204	Amended
	11	.0101-.0403	Adopted
<u>GOVERNOR'S OFFICE</u>			
9	NCAC 2	Executive Order Number 30	
<u>HUMAN RESOURCES</u>			
10	NCAC 4C	.0304	Repealed
		.0305	Adopted
	7A	.0407	Repealed
		.0501	Adopted
	7B	.0205	Repealed
		.0354	Adopted
	8A	.0312	Amended
	8B	.0312-.0313	Amended
		.0501-.0505	Repealed
		.0607	Amended
		.0609	Amended
		.0611	Amended
		.0613	Amended
		.0615	Amended
	8D	.0308	Amended
		.0506	Repealed
		.0516	Adopted
		.0704	Repealed
		.0706	Adopted
	8G	.0712	Adopted
	10A	.0316	Repealed
		.0318	Adopted
		.0485	Amended
		.0527	Amended
		.1031	Repealed
		.1033	Adopted
		.1136	Repealed
		.1138	Adopted
		.1213	Repealed
		.1214	Adopted
		.1955	Amended
		.1965	Amended
		.2115	Amended
		.2221	Amended
		.2307	Repealed
		.2308	Adopted
		.2417	Amended

10B	.0101-.0112	Repealed
	.0201-.0238	Repealed
	.0301-.0315	Repealed
	.0401-.0413	Repealed
	.0801-.0805	Adopted
	.0901-.0931	Adopted
	.1001-.1004	Adopted
	.1101-.1119	Adopted
	.1201-.1213	Adopted
	.1300-.1306	Adopted
10C	.0509	Repealed
	.0514	Adopted
	.0703	Repealed
	.0705	Adopted
10D	.0801-.0802	Amended
	.1102	Amended
	.1306	Amended
	.1312	Repealed
	.1313	Adopted
	.1625	Amended
	.1631	Amended
	.2603	Amended
10F	.0002	Amended
	.0029-.0030	Amended
	.0032-.0034	Amended
	.0041	Amended
43J	.0101	Repealed

INSURANCE

11	NCAC	8	.0204-.0205	Amended
			.0207	Amended

JUSTICE

12	NCAC	9A	.0103	Amended
		9B	.0115	Adopted
			.0205-.0206	Amended
			.0210-.0211	Amended
			.0218-.0219	Amended
			.0226-.0227	Amended
			.0228-.0232	Adopted
			.0304-.0305	Amended
			.0403-.0404	Adopted
			.0410	Amended
			.0413-.0416	Adopted
	9C		.0404	Adopted

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC	10F	.0332	Amended
		10H	.0601-.0609	Repealed

REVENUE

17	NCAC	6B	.3802-.3803	Adopted
		7B	.1123	Adopted
			.1602	Amended
			.1701-.1702	Amended
			.3601	Amended
			.4301	Amended
			.4410	Amended
			.5301	Amended
			.5445	Adopted
	7C		.0204	Amended
			.0501-.0503	Adopted

TRANSPORTATION

19A	NCAC	2D	.0901-.0902	Adopted
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NORTH CAROLINA BOARD OF CPA EXAMINERS

21	NCAC	8G	.0212	Adopted
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26	NCAC	1	.0003	Adopted
		4	.0001-.0008	Adopted

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department
8	Elections, State Board of
9	Governor
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control, Department of
15	Natural Resources and Community Development
16	Education, Department of
17	Revenue, Department of
18	Secretary of State
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	Personnel, Department of State
26	Office of Administrative Hearings

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
30	Law Examiners, Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapist, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in
44	Osteopathic Examination and Registration
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- E - Errata
- EO - Executive Order
- FDL - Final Decision Letters
- FR - Final Rule
- GS - General Statute
- JO - Judicial Order
- LRA - List of Rules Affected
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
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